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REMARKS

Claims 1-25 are pending in this application. Claims 1-5, 8-12, 15-19, and 22-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kirouac et al. in view of Jones. Claims 6, 7, 13, 14, 20 and 21 were objected to as being dependent upon a rejected base claim, but allowable if written in independent form. Claims 1, 9 and 15 are currently amended. Reconsideration is respectfully requested.

Claims 1, 9 and 15 distinguish the cited combination because the software update is executed without intervention by the user of the programmable device. The position taken by the Office is that Jones teaches restart and Kirouac teaches all other elements of claims 1, 9 and 15. However, the technique described in Kirouac requires the user to access the data store to initiate a software upgrade. Col. 4, lines 67-68. In other words, the user's software is not upgraded until the user manually establishes communication with the data store and manually initiates the upgrade. Consequently, if the user fails to prompt the software upgrade for the programmable device then the software on the programmable device is not updated. This can be a problem when, for example, an enterprise requires that all employees use a particular version of software for compatibility purposes. The presently claimed invention overcomes this problem by executing a software update without intervention by the user of the programmable device. As recited in claim 1, the method includes "updating, without being prompted via the programmable device, the software on the programmable device in accordance with an updating process by transmitting at least one file from the server to the programmable device ... whereby software on the programmable device is updated without intervention by a user of the programmable device." Similarly, claim 9 recites that the server is operable to "update, without being prompted via the programmable device, software on the programmable device in accordance with an update

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process ... whereby software on the programmable device is updated without intervention by a user of the programmable device." Similarly, claim 15 recites that the computer program product is operable to update, without being prompted via the programmable device, software on the programmable device in accordance with an update process ... whereby software on the programmable device is updated without intervention by a user of the programmable device."

The Office conceded in the previous OA that the Jones reference fails to teach an automated update process in which user intervention is not required. Hence, it is submitted that claims 1, 9 and 15 as currently amended overcome the rejection, and withdrawal of the rejection is therefore requested. Claims 2-8, 10-14, and 16-25 are dependent claims which further distinguish the invention, and which are allowable for the same reasons as their respective base claims. Withdrawal of the rejections of claims 2-8, 10-14, and 16-25 is therefore also requested.

In addition to the reasons stated above, the cited combination itself is improper because sufficient motivation to combine the cited references has not been shown. A *prima facie* case of obviousness under 35 U.S.C. 103 must include a showing of a suggestion, teaching or motivation that would have led a person of ordinary skill in the art to combine the cited references *in the particular manner claimed*. See *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999), and *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000). In this case, the Office has not established that a person of ordinary skill in the art would be motivated to combine the cited combinations of references in the particular manner of the corresponding rejected claims. Withdrawal of the rejections based on the cited combination is therefore requested.

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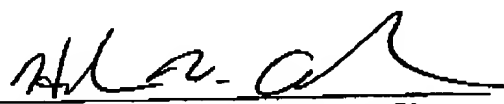
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Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney, at 978-264-4001 (X305) so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date

  
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